

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill provides a criminal penalty for conduct that was not previously subject to such penalty.

B. EFFECT OF PROPOSED CHANGES:

Estate Tax

Florida's estate tax is equal to the federal credit allowed for state death taxes paid. Every personal representative is required to give notice to the Department of Revenue ("Department") of the decedent's death on a form specified by the Department. If the estate is required to file a federal estate tax return, the estate must also file a Florida estate tax return.

Prior to January 1, 2000, estates that did not have to file a federal return still had to file a form with the Department indicating that "no tax is due." When the Department received the form indicating "no tax is due", it issued a certificate to the estate stating that "no tax is due." The estate then filed the certificate with the Clerk of the Court.

In 1999, s. 198.32, F.S. was amended to allow the estates of decedents who died on or after January 1, 2000, that are not required to file a federal return, to file an "Affidavit of No Florida Estate Tax Due" directly with the Clerk of the Court and not have to obtain a nontaxable certificate from Department of Revenue. However, the estates for decedents who died prior to January 1, 2000, are still required to file the form with the Department in order to obtain a nontaxable certificate. The Department reports that 400-500 of these forms are received and processed monthly.

The bill amends s. 198.32, F.S. to allow all estates that are not required to file a federal tax return to file an "Affidavit of No Florida Estate Tax Due" directly with the Clerk of the Court regardless of the decedent's date of death.

Doc Stamp and Non-recurring Intangible Tax – Timeshares

Section 721.08, F.S., imposes special escrow requirements on purchaser's funds to protect consumers who purchase timeshare interests. The law is to protect the purchaser's funds prior to closing and allows release of funds from escrow only upon cancellation or noncompliance with the provisions of the statute.

Section 213.756, F.S., provides that certain monies collected from a purchaser under the representation that the funds are taxes are state funds from the moment of collection and are not subject to refund absent proof that such funds have been refunded previously to the purchaser.

The deeds and mortgages executed in conjunction with the sale of a timeshare interest in real property are subject to documentary stamp tax (Chapter 201) and non-recurring intangible tax (Chapter 199). The Department has taken the position that taxes must be remitted when they become due pursuant to

Chapters 201 and 199. The timeshare industry believes that remitting taxes prior to the release of funds from escrow would violate the provisions of s. 721.08, F.S.

The bill recognizes the special escrow requirements that apply to sales of timeshare interests and provides that taxes on notes or other obligations and mortgages or other liens executed in conjunction with the sale by a developer of a timeshare interest in a timeshare plan are due on the earlier of the date on which:

1. The mortgage or other lien is recorded; or
2. All of the conditions precedent to the release of the purchaser's escrowed funds or other property pursuant to s. 721.08(2)(c) have been complied with, regardless of whether the developer has posted an alternative assurance.

If moneys are designated on a closing statement as taxes collected from the purchaser, but the mortgage or other lien with respect to which the tax was collected is never recorded, the tax moneys shall be paid to the department on or before the 20th day of the month following the month in which the funds are available for release from escrow, unless the moneys are refunded to the purchaser before that date.

The Department shall have authority to adopt rules.

Communication Services Tax – Service Address Definition

The current definition of “service address” in s. 202.11, F.S., does not provide guidance for sourcing or siting communications services where a credit or payment mechanism not related to a service address is used and the location of the equipment from which the communication services originate or are received by the customer are not known. An example of this would be satellite radio in a vehicle that may cross many jurisdictional lines while receiving the radio signal making the determination of the appropriate tax rates extremely difficult, if not impossible, to determine.

The bill amends the definition of service address in s. 202.011(15)(a), F.S., to include a customer’s street address as the location of the service address for communication services where the location of the equipment from which the services originate or are received by the customer is unknown.

Sales and Use Tax – Fraud Definition

Section 212.12(2), F.S., provides specific penalties for a taxpayer who:

- fails to timely file a return or timely remit tax;
- fails to disclose a tax or fee due with a return;
- knowingly and with a willful intent to evade tax fails to file six consecutive returns (criminal penalty);
- makes a false or fraudulent return with a willful intent to evade payment (criminal penalty);
- fails to timely remit the proper estimated payment; or
- fails to timely remit the proper estimated payment with a consolidated return.

Presently there is no specific penalty for willfully attempting to evade a tax or fee imposed under Chapter 212.

The Department cites the following examples of fraudulent behavior that it believes it is unable to penalize or to refer for prosecution under the current statutes.

Example one: A person who holds him or herself out to be a “tax preparer” or “tax consultant” knowingly advises a taxpayer to illegally under report and not remit sales taxes that were actually collected. Since the “tax preparer” did not actually fill out the false tax return, there is no specific penalty available under present law.

Example two: A person purchases a taxable item in Florida. Usually the item is small, but valuable, such as jewelry. The seller and the buyer agree that the buyer shall immediately take possession of the item, but the seller will ship an empty box to an address out of state to evade the sales tax. Under present law the Department can only penalize or recommend prosecution of the seller even though the buyer knowingly participated in the fraud.

The bill amends s. 212.12(2), F.S., to provide that any person who willfully attempts in any manner to evade any tax or fee imposed under chapter 212 commits a felony of the third degree and, in addition to other penalties provided by law, is liable for a specific penalty of 100 percent of the tax bill or fee and, upon conviction, a fine of up to \$5,000, imprisonment of up to 5 years; or imprisonment of up to 10 years if the person is a habitual felony offender.

Penalty Compromise Clarification

Chapter 2002-213, Laws of Florida, amended s. 213.21(10), F.S., to allow the Department to automatically waive penalties for taxes under Chapter 212 for a one-time noncompliant tax return for an otherwise compliant taxpayer. Previously, such a taxpayer would have had to request the penalty waiver in writing. The question has arisen whether this compromise authority applies to other taxes and fees that are not imposed under Chapter 212, F.S., but are administered under provisions found in Chapter 212, F.S.

The bill amends s. 213.21(10), F.S., to specify and clarify that all taxes administered under Chapter 212 qualify for the automatic penalty compromise or settlement. Specific reference is made to the tourist development tax and the tourist impact tax that are imposed in Chapter 125, but administered under Chapter 212.

This section of the bill takes effect upon becoming a law, and will operate retroactively to July 1, 2003.

Unclaimed Evidence

Florida law contains no provision for the disposition of unclaimed evidence at the conclusion of a criminal investigation by the Department. As soon as practical after the disposition of a case, the Department returns the records to the person or entity from which the records were received. Sometimes the Department is unable to locate the appropriate party to return the records or documents and other times no claim is made for the records or documents. These unclaimed documents are currently stored by the Department indefinitely and at a growing expense to the state.

The bill provides a procedure for the Department to dispose of unclaimed evidence. Title to unclaimed evidence lawfully seized pursuant to an investigation, obtained for use as evidence in a proceeding, or held as evidence by the Department shall vest permanently in the Department 60 days after the conclusion of the related legal proceeding.

If the property is of appreciable value, the department may elect to retain the property for the department's own use or to transfer the property to another unit of state or local government. If the property is not of appreciable value, the agency may elect to destroy it.

The Department is authorized to prescribe by rule procedures to be followed when transferring title or record of ownership of property of appreciable value or when destroying property not of appreciable

value. The rule shall also set forth criteria regarding treatment of unclaimed evidence or unclaimed tangible personal property, including, but not limited to, notice and timing requirements.

These provisions shall apply to all unclaimed evidence or unclaimed tangible personal property possessed by the Department on the date the bill becomes law.

Date for Discretionary Sales Surtax Referendums

Section 212.055, F.S., authorizes counties to impose seven local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, and admissions. These surtaxes are: Charter County Transit System Surtax; Local Government Infrastructure Surtax; Small County Surtax; Indigent Care & Trauma Center Surtax; County Public Hospital Surtax; School Capital Outlay Surtax; and Voter-Approved Indigent Care Surtax. The Department of Revenue is responsible for administering, collecting, and enforcing all sales surtaxes. Collections received by the department are returned monthly to the county imposing the surtax.

Depending on which of the surtaxes is being imposed, the county must obtain approval to levy the surtax either by extraordinary vote of the governing body or by voter approval in a countywide referendum. See chart below.

TAX	AUTHORIZATION TO LEVY
Charter County Transit System Surtax	Charter county – voter approved charter amendment Consolidated Government – countywide referendum
Local Government Infrastructure Surtax	Countywide referendum
Small County Surtax	Use for operating purposes – extraordinary vote of governing body Use to service bond indebtedness – countywide referendum
Indigent Care & Trauma Center Surtax	Extraordinary vote of governing body or countywide referendum
County Public Hospital Surtax	Extraordinary vote of governing body or countywide referendum
School Capital Outlay Surtax	Countywide referendum
Voter-Approved Indigent Care Surtax	Countywide referendum

Under current law, if a referendum is required or authorized to impose the surtax, the county may hold the referendum on the same day as any primary election, including the presidential preference election, or on the same day as any general election. Additionally, the county may hold a special general election for the referendum.

The bill amends s. 212.054, F.S., to provide that a county shall not hold any discretionary sales surtax referendum on the day of any federal, state, or local primary election. The county still may hold the referendum on the same day as any general election or may call a special general election for the purpose of holding the referendum.

Sales Tax on Vessels

Presently no sales or use tax is imposed on a vessel imported into Florida for the sole purpose of being offered for sale by a registered yacht broker/dealer. The Department of Revenue has issued a formal opinion confirming that this is the Department's interpretation of the law. See Technical Assistance Advisement 03A-051. However, due to an older, informal opinion of the Department, the yacht broker industry is concerned that the law needs to be clarified.

The bill clarifies present law that no sales or use tax shall be imposed on a vessel imported into Florida for the sole purpose of being offered for sale by a registered Florida yacht broker/dealer, provided the vessel remains under the care, custody and control of the registered Florida yacht broker/dealer and the owner of the vessel makes no personal use of the vessel during that time.

New State Tax or Fee

Article XI, s. 7 of the Florida Constitution currently requires that any "new State tax or fee" imposed by constitutional amendment must be approved by at least 2/3 of the participating voters. The Constitution states the phrase "new state tax or fee" means "any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994."

The bill further defines and clarifies "new state tax or fee" as including, but not limited to, "the elimination, sunset, or repeal of any exemption or exclusion to a state tax or fee or the increase in the rate of levy of a state tax or fee."

A new state tax or fee shall be deemed imposed if, upon approval of tax or fee by amendment to the Florida Constitution, no further legislative action is required, with the exception of implementing legislation, in order for the new state tax for fee to take effect.

Facility for a New or Retained Professional Sports

Distribution of Sales Tax Proceeds

Chapter 212, F.S., imposes a state sales and use tax of 6% on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles. Tax collections are deposited by the Department of Revenue (DOR) in the General Revenue Fund of the state and into a variety of trust funds benefiting state agencies and local governments.

Section 212.20, F.S., governs the distribution by DOR of tax revenues collected under the provisions of Chapter 212, F.S. Subsection (6) of that section requires DOR to distribute funds to certain qualified sports facilities.

Sales Tax Distributions to Sports Facilities – Capped Number, Payment & Length of Time

Pursuant to s. 212.20(6)(d)7.b.–d., F.S., DOR distributes tax revenues to professional sports franchise facilities that are certified by the Office of Tourism, Trade, and Economic Development (OTTED) as meeting requirements set forth in s. 288.1162, F.S., to the Professional Golf Hall of Fame facilities as certified pursuant to s. 288.1168, F.S., and to the International Game Fish Association World Center facility as certified pursuant to s. 288.1169, F.S. Each recipient receives a fixed monthly distribution that is set by statute. The law caps the number of new and retained professional sports franchise facilities eligible for funding at eight and requires that at least five facilities for retained spring training franchises be certified. No other sports-related businesses or facilities are entitled to distributions from DOR of tax revenues collected pursuant to Chapter 212, F.S.

Criteria for Certification for Tax Distribution Eligibility

The criteria generally include such things as relationship with and support of a local unit of government, projects for paid attendance, and demonstration of being able to provide or having financial or other commitments to provide more than one-half of the costs incurred or related to the improvement or development of the facility. Other requirements include reviews, recertification, sanctions, audits, and a prohibition of additional certifications for the same facility.

Office of Tourism, Trade and Economic Development (OTTED)

The Florida Sports Foundation reviews all applications and makes recommendations for certification to OTTED for all sports related distributions of funds in s. 212.20(6)(d)7., F.S. OTTED then makes the final decision on certification.

At present, there are several incentive programs available to attract, recruit, and retain businesses to the state. The majority of the programs are coordinated and administered by OTTED and Enterprise Florida, Inc. As the state's economic development organization, Enterprise Florida, Inc., is responsible for the retention and recruitment of businesses to Florida.

Facility for a new professional sports franchise or for a retained professional sports franchise

The Department of Revenue distributes \$166,667 monthly to each applicant that has been certified by OTTED as a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise." A "new professional sports franchise" means a professional sports franchise that is not based in this state prior to April 1, 1987 and a "retained professional sports franchise" means a professional sports franchise that has had a league-authorized location in this state on or before December 31, 1976, and has continuously remained at that location, and has never been located at a previously certified facility.

To qualify an applicant, the OTTED must determine that:

(a) A "unit of local government" is responsible for the construction, management, or operation of the professional sports franchise facility or holds title to the property on which the professional sports franchise facility is located.

(b) The applicant has a verified copy of a signed agreement with a new professional sports franchise for the use of the facility for a term of at least 10 years, or in the case of a retained professional sports franchise, an agreement for use of the facility for a term of at least 20 years.

(c) The applicant has a verified copy of the approval from the governing authority of the league in which the new professional sports franchise exists authorizing the location of the professional sports franchise in this state after April 1, 1987, or in the case of a retained professional sports franchise, verified evidence that it has had a league-authorized location in this state on or before December 31, 1976. The term "league" means the National League or the American League of Major League

Baseball, the National Basketball Association, the National Football League, or the National Hockey League.

(d) The applicant has projections, verified by the Office of Tourism, Trade, and Economic Development, which demonstrate that the new or retained professional sports franchise will attract a paid attendance of more than 300,000 annually.

(e) The applicant has an independent analysis or study, verified by the Office of Tourism, Trade, and Economic Development, which demonstrates that the amount of the revenues generated by the taxes imposed under chapter 212 with respect to the use and operation of the professional sports franchise facility will equal or exceed \$2 million annually.

(f) The municipality in which the facility for a new or retained professional sports franchise is located, or the county if the facility for a new or retained professional sports franchise is located in an unincorporated area, has certified by resolution after a public hearing that the application serves a public purpose.

(g) The applicant has demonstrated that it has provided, is capable of providing, or has financial or other commitments to provide more than one-half of the costs incurred or related to the improvement and development of the facility.

OTTED may only certify eight applicants. To date, seven facilities have been certified: Pro Player Stadium (Florida Marlins); Alltel Stadium (Jacksonville Jaguars); Tropicana Dome (Tampa Bay Devil Rays); St. Pete Forum (Tampa Bay Lightning); Home Depot Center (Florida Panthers); Raymond James Stadium (Tampa Bay Buccaneers); and American Airlines Arena (Miami Heat)

Proposed Changes by the Bill

The bill amends s. 288.1162, F.S., to provide that nine applicants may be certified by OTTED as a facility for a new professional sports franchise or a facility for a retained professional sports franchise.

Additionally, the bill amends s. 288.1162, F.S. to provide that an applicant is not qualified for certification if the franchise formed the basis for a previous certification, unless the previous certification was for an applicant that served as the home facility for two professional sports franchises, and the franchise used as the basis for the previous certification is used as the basis for the certification of a new applicant. The bill further provides that the franchise continuing to use the original applicant shall be deemed the franchise forming the basis of the previous certification, and the previous certification shall continue to apply for the time period permitted from the original date of certification.

The bill would allow another facility for the Florida Marlins to be certified as an applicant and to receive disbursements. Pro Player Stadium would retain its current disbursements, but the Miami Dolphins, rather than the Florida Marlins, would be considered the retained professional sports franchise.

Notwithstanding any other provision of law, an applicant that is certified after the effective date of the act by the OTTED as a facility for a new professional sports franchise or a facility for a retained professional sports franchise may not receive disbursements until July 1, 2005.

C. SECTION DIRECTORY:

Section 1: Amends s. 198.32, F.S.

Section 2: Amends s. 199.135(5), F.S.

Section 3: Creates s. 201.02(10), F.S.

Section 4: Creates s. 201.08(8), F.S.

Section 5: Effective July 1, 2004, amends s. 202.15, F.S.

Section 6: Effective July 1, 2004, amends s. 212.12(2), F.S.

Section 7: Effective upon becoming law and operating retroactively to July 1, 2003, amends s. 213.21(10), F.S.

Section 8: Effective July 1, 2004, creates s. 213.758, F.S.

Section 9: Creates s. 212.054(9).

Section 10: Amends ss. 212.06(1) and (12), F.S.

Section 11: Creates s. 213.016, F.S.

Section 12: Effective July 1, 2004, amends ss. 288.1162(7) and (9).

Section 13: Provides that notwithstanding any other provision of law, an applicant that is certified after the effective date of this act by the Office of Tourism, Trade, and Economic Development as a facility for a new professional sports franchise or a facility for a retained professional sports franchise may not receive disbursements until July 1, 2005.

Section 14: Unless otherwise provided, the effective date of the bill is upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Allowing one additional applicant to be certified by OTTED as a facility for a new professional sports franchise or a facility for a retained professional sports franchise will have a recurring negative fiscal impact to General Revenue of \$2.0 million beginning in FY 05/06.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: The Department of Revenue is given rule-making authority to implement the provisions of the bill regarding timeshares and unclaimed evidence.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES